



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG-2012-0492

RIN 1625-AA00

Safety Zone; NOAA Vessel Rueben Lasker Launch, Marinette, Wisconsin

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone on the Menominee River in Marinette Wisconsin. This zone is intended to restrict vessels from a portion of Menominee River during the launching of the NOAA vessel, Rueben Lasker, on June 16, 2012. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the launching of this large vessel.

DATES: This rule is effective from 10:30 a.m. to 12:00 p.m. on June 16, 2012.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov) are part of docket USCG-2012-0492 and are available online

by going to [www.regulations.gov](http://www.regulations.gov), type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. They are also available for inspection or copying at the Docket Management Facility in room W12-140 on the ground floor of the U.S. Department of Transportation, West Building, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or email CWO Jon Grob, U.S. Coast Guard Sector Lake Michigan, at 414-747-7188 or Jon.K.Grob@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision

authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. It would be impractical to publish an NPRM because the final details for this event were not received by the Coast Guard with sufficient time to allow for a public comment period. Thus, delaying the effective date of this rule to wait for a comment period to run would prevent the Coast Guard from performing its statutory function of protecting life on navigable waters and thus, would be impractical.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, a 30 day notice period would also be impractical.

#### B. Basis and Purpose

The NOAA vessel, Rueben Lasker, will be launched from shore to water on June 16, 2012. This event will take place in Marinette, WI. The Captain of the Port, Sector Lake Michigan, has determined that this launching poses

significant risks to the boating public in the vicinity of the launch location.

### C. Discussion of Rule

The Captain of the Port, Sector Lake Michigan, has determined that a safety zone is necessary to mitigate the aforementioned safety risks associated with the launching of NOAA's vessel. Thus, this temporary rule establishes a safety zone that encompasses all waters of the Menominee River, in the vicinity of Marinette Marine Corporation, between the Bridge Street Bridge located in position 45°06'12"N, 087°37'34"W and a line crossing the river perpendicularly passing through position 45°05'57"N, 087°36'43"W, in the vicinity of the Ansul Company. (DATUM: NAD 83). This safety zone will be effective from 10:30 a.m. to 12:00 p.m. on June 16, 2012.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Lake Michigan, or his or her designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone around the boat launch will be relatively small and exist for relatively short time. Thus, restrictions on vessel movement within that

particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

## 2. Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Menominee River between 10:30 a.m. and 12:00 p.m. on June 16, 2012.

This temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic should be minimal given the location and the time of year that this event is occurring. Furthermore, this safety zone will only be in effect for one and one half hours. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of The Port, Sector Lake Michigan, to transit through the safety zone. The Coast Guard will give notice to the

public via a Broadcast Notice to Mariners that the regulation is in effect.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person in the the FOR FURTHER INFORMATION CONTACT section above. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular,



the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

## 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## 12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### 13. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is

categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction because it involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0492 to read as follows:

§ 165.T09-0492 Safety Zone; NOAA Vessel Rueben Lasker Launch, Marinette, Wisconsin.

(a) Location. This safety zone encompasses all U.S.

navigable waters of the Menominee River, in the vicinity of Marinette Marine Corporation, between the Bridge Street Bridge located in position 45°06'12"N, 087°37'34"W and a line crossing the river perpendicularly passing through position 45°05'57"N, 087°36'43"W, in the vicinity of the Ansul Company. (DATUM: NAD 83).

(b) Effective and enforcement period. This rule is effective and will be enforced from 10:30 a.m. to 12:00 p.m. on June 16, 2012.

(c) Regulations.

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

(3) The "designated representative" of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The on-scene representative of the Captain of the Port, Sector Lake

Michigan, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

DATED: June 1, 2012

M. W. SIBLEY  
Captain, U.S. Coast Guard  
Captain of the Port, Sector Lake Michigan

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